

AMENDED IN SENATE JUNE 12, 2007

AMENDED IN SENATE JUNE 11, 2007

AMENDED IN ASSEMBLY APRIL 10, 2007

CALIFORNIA LEGISLATURE—2007—08 REGULAR SESSION

ASSEMBLY BILL

No. 1008

Introduced by Assembly Member Charles Calderon

February 22, 2007

An act to amend Sections 12800, 12805, and 12820 of, to add Section 12836 to, and to repeal Section 116.5 of, the Insurance Code, relating to insurance.

LEGISLATIVE COUNSEL'S DIGEST

AB 1008, as amended, Charles Calderon. Insurance: vehicle service contracts.

Existing law provides that certain express warranties constitute automobile insurance unless certain requirements are met.

This bill would delete those provisions.

Existing law defines "vehicle service contract" for purposes of provisions relating to sellers of vehicles.

This bill would change the definition of "vehicle service contract" to include only those agreements that have a term of at least one year that promise routine maintenance, and agreements that promise certain repair, replacement, or maintenance, as specified.

Under existing law, certain types of agreements or contracts do not constitute insurance, including a maintenance service contract with a term of one year or less that does not contain provisions for indemnification and does not provide a discount to the purchaser, as specified.

This bill would delete that provision and instead provide that an agreement promising only routine maintenance that does not constitute a vehicle service contract does not constitute insurance.

Existing law provides that prior to offering a vehicle service contract form to a purchaser or providing a vehicle service contract form to a seller, an obligor shall file with the commissioner a specimen of that vehicle service contract form.

This bill would provide that a vehicle service contract may include any or all specified benefits.

Existing law provides that prior to incurring an obligation under a vehicle service contract, an obligor shall file with the commissioner, as specified, a policy covering 100% of the obligor's vehicle service contract obligation.

This bill would provide that in lieu of filing an insurance policy as specified prior to incurring an obligation under a vehicle service contract, an obligor or its parent company may establish to the commissioner's satisfaction that it possesses a net worth of \$100,000,000 and provides the commissioner, upon request, with specified documentation. The bill would also provide that if the obligor elects to meet the net worth requirement through the parent company, the parent company shall agree in writing to guarantee the obligations of the obligor relating to contracts of the obligor issued in this state.

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 116.5 of the Insurance Code is repealed.
- 2 SEC. 2. Section 12800 of the Insurance Code is amended to
- 3 read:
- 4 12800. The following definitions apply for purposes of this
- 5 part:
- 6 (a) "Motor vehicle" means a self-propelled device operated
- 7 solely or primarily upon land and may include both self-propelled
- 8 motor homes or recreational vehicles, non-self-propelled camping
- 9 and recreational trailers, off-road vehicles, and trailers designed
- 10 to transport off-road vehicles. However, "motor vehicle" shall not
- 11 include a self-propelled vehicle, or a component part of such a
- 12 vehicle, that has any of the following characteristics:

1 (1) Has a gross vehicle weight rating of 30,000 pounds or more,
2 and is not a recreational vehicle as defined by Section 18010 of
3 the Health and Safety Code.

4 (2) Is designed to transport more than 15 passengers, including
5 the driver.

6 (3) Is used in the transportation of materials considered
7 hazardous pursuant to the Hazardous Materials Transportation Act
8 (49 U.S.C. Sec. 5101 et seq.), as amended.

9 (b) "Watercraft" means a vessel, as defined in Section 21 of the
10 Harbors and Navigation Code, and may include any
11 non-self-propelled trailer used to transport such watercraft upon
12 land.

13 (c) (1) "Vehicle service contract" means a contract or agreement
14 for a separately stated consideration and for a specific duration to
15 repair, replace, or maintain a motor vehicle or watercraft, or to
16 indemnify for the repair, replacement, or maintenance of a motor
17 vehicle or watercraft, necessitated by an operational or structural
18 failure due to a defect in materials or workmanship, or due to
19 normal wear and tear.

20 (2) A vehicle service contract may also provide for the incidental
21 payment of indemnity under limited circumstances only in the
22 form of the following additional benefits: coverage for towing,
23 substitute transportation, emergency road service, rental car
24 reimbursement, reimbursement of deductible amounts under a
25 manufacturer's warranty, and reimbursement for travel, lodging,
26 or meals.

27 (3) "Vehicle service contract" also includes an agreement of a
28 term of at least one year, for separately stated consideration, that
29 promises routine maintenance.

30 (4) "Vehicle service contract" also includes any agreement,
31 provided with or without separate consideration, that promises to
32 repair, replace, or maintain a motor vehicle or watercraft, or to
33 indemnify for the repair, replacement, or maintenance of a motor
34 vehicle or watercraft, conditioned upon the use of a specific brand
35 or brands of lubricant, treatment, fluid, or additive. A person who
36 has formulated or produced, and continuously offered in this state
37 for more than 15 years, a motor vehicle lubricant, treatment, fluid,
38 or additive, is eligible to apply to the commissioner for a written
39 exemption from the provisions of this part, which exemption shall
40 be granted upon satisfactory proof.

(5) Notwithstanding Section 116, and paragraphs (1) and (2) of this subdivision, a vehicle service contract also includes one or more of the following:

(A) An agreement that promises the repair or replacement of a tire or wheel necessitated by wear and tear, defect, or damage caused by a road hazard. However, an agreement that promises the repair or replacement of a ~~tire or wheel~~ necessitated by wear and tear, defect, or damage caused by a road hazard, in which the obligor is the ~~tire or wheel~~ manufacturer, is exempt from the requirements of this part. A warranty provided by a tire or wheel distributor or retailer is exempt from the requirements of this part as long as the warranty covers only defects in the material or workmanship of the tire or wheel.

(B) An agreement that promises the repair or replacement of glass on a vehicle necessitated by wear and tear, defect, or damage caused by a road hazard. However, a warranty provided by a vehicle glass manufacturer is exempt from the requirements of this part. A warranty provided by a vehicle glass distributor or retailer is exempt from the requirements of this part as long as the warranty covers only defects in the material or workmanship of the vehicle glass.

(C) An agreement that promises the removal of a dent, ding, or crease without affecting the existing paint finish using paintless dent repair techniques, and which expressly excludes the replacement of vehicle body panels, sanding, bonding, or painting.

(d) “Service contract administrator” or “administrator” means any person, other than an obligor, who performs or arranges, directly or indirectly, the collection, maintenance, or disbursement of moneys to compensate any party for claims or repairs pursuant to a vehicle service contract, and who also performs or arranges, directly or indirectly, any of the following activities with respect to vehicle service contracts in which a seller located within this state is the obligor:

(1) Providing sellers with service contract forms.

(2) Participating in the adjustment of claims arising from service contracts.

(e) “Purchaser” means any person who purchases a vehicle service contract from a seller.

(f) “Seller” means either of the following:

1 (1) With respect to motor vehicles, a dealer or lessor-retailer
2 licensed in one of those capacities by the Department of Motor
3 Vehicles and who sells vehicle service contracts incidental to his
4 or her business of selling or leasing motor vehicles.

5 (2) With respect to watercraft, a person who sells vehicle service
6 contracts incidental to that person's business of selling or leasing
7 watercraft vehicles.

8 (g) "Obligor" means the entity legally obligated under the terms
9 of a service contract.

10 SEC. 3. Section 12805 of the Insurance Code is amended to
11 read:

12 12805. (a) Notwithstanding Sections 103 and 116, the
13 following types of agreements shall not constitute insurance:

14 (1) A vehicle service contract that does each of the following:

15 (A) Names as the obligor a motor vehicle manufacturer or
16 distributor licensed in that capacity by the Department of Motor
17 Vehicles, or a watercraft manufacturer.

18 (B) Covers only motor vehicles or watercraft manufactured,
19 distributed, or sold by that obligor.

20 (2) A vehicle service contract in which the obligor is a seller,
21 provided that the obligor complies with all provisions of this part
22 except Section 12815.

23 (3) A vehicle service contract sold by a seller in which the
24 obligor is a party other than the seller, provided that the obligor
25 complies with all provisions of this part.

26 (4) An agreement in which the obligor is a motor vehicle or
27 watercraft part manufacturer, distributor, or retailer, that covers
28 no more than the following items:

29 (A) The repair or replacement of a part manufactured,
30 distributed, or retailed by that obligor.

31 (B) Consequential and incidental damage resulting from the
32 failure of that part.

33 (5) An agreement in which the obligor is a repair facility, that
34 is entered into pursuant and subsequent to repair work previously
35 performed by that repair facility, and that is limited in scope to the
36 following:

37 (A) The repair or replacement of the part that was previously
38 repaired.

39 (B) Consequential and incidental damage resulting from the
40 failure of that part.

1 (6) An agreement promising only routine maintenance that does
2 not constitute a vehicle service contract.

3 (b) The types of agreements described in paragraphs (4), (5),
4 and (6) of subdivision (a) are exempt from all provisions of this
5 part.

6 (c) Vehicle service contracts described in paragraph (1) of
7 subdivision (a) are exempt from the provisions of Sections 12815,
8 12830, 12835, and 12845.

9 SEC. 4. Section 12820 of the Insurance Code is amended to
10 read:

11 12820. (a) Prior to offering a vehicle service contract form to
12 a purchaser or providing a vehicle service contract form to a seller,
13 an obligor shall file with the commissioner a specimen of that
14 vehicle service contract form.

15 (b) A vehicle service contract form may include any or all of
16 the benefits described in subdivision (c) of Section 12800 and shall
17 comply with all of the following requirements:

18 (1) The vehicle service contract shall include a disclosure in
19 substantially the following form: "Performance to you under this
20 contract is guaranteed by a California approved insurance company.
21 You may file a claim with this insurance company if any promise
22 made in the contract has been denied or has not been honored
23 within 60 days the date proof of loss was filed. The name and
24 address of the insurance company is: (insert name and address).
25 If you are not satisfied with the insurance company's response,
26 you may contact the California Department of Insurance at
27 1-800-927-4357."

28 (2) All vehicle service contract language that excludes coverage,
29 or imposes duties upon the purchaser, shall be conspicuously
30 printed in boldface type no smaller than the surrounding type.

31 (3) The vehicle service contract shall do each of the following:

32 (A) State the obligor's full corporate name or a fictitious name
33 approved by the commissioner, the obligor's mailing address, the
34 obligor's telephone number, and the obligor's vehicle service
35 contract provider license number.

36 (B) State the name of the purchaser and the name of the seller.

37 (C) Conspicuously state the vehicle service contract's purchase
38 price.

39 (D) Comply with Sections 1794.4 and 1794.41 of the Civil
40 Code.

1 (E) Name the administrator, if any, and provide the
2 administrator's license number.

3 (4) If the vehicle service contract excludes coverage for
4 preexisting conditions, the contract must disclose this exclusion
5 in 12-point type.

6 (c) The following benefits constitute insurance, whether offered
7 as part of a vehicle service contract or in a separate agreement:

8 (1) Indemnification for a loss caused by misplacement, theft,
9 collision, fire, or other peril typically covered in the comprehensive
10 coverage section of an automobile insurance policy, a homeowner's
11 policy, or a marine or inland marine policy.

12 (2) Locksmith services, unless offered as part of an emergency
13 road service benefit.

14 SEC. 5. Section 12836 is added to the Insurance Code, to read:

15 12836. In lieu of complying with Section 12830, an obligor or
16 its parent company may establish to the commissioner's satisfaction
17 that it possesses a net worth of one hundred million dollars
18 (\$100,000,000). The obligor shall, upon request, provide the
19 commissioner with all documents and affidavits necessary to
20 establish the net worth, including, but not limited to, a copy of the
21 obligor's financial statements or the obligor's parent company's
22 financial statements, and affidavits by the president and chief
23 financial officer attesting to the net worth of the obligor or the
24 obligor's parent company. If the obligor elects to meet the net
25 worth requirement through the parent company, the parent
26 company shall agree in writing to guarantee the obligations of the
27 obligor relating to contracts of the obligor issued in this state.